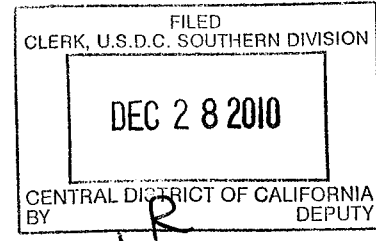


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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAVID SCOTT HARRISON,	) Case No. CV 10-2300-GW (RNB)
Petitioner,	
vs.	
JOHN MARSHALL, Warden,	
Respondent.	) ORDER ADOPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE; AND DENYING PETITIONER'S REQUESTS FOR JUDICIAL NOTICE AND AN EVIDENTIARY HEARING

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all the records and files herein, and the Report and Recommendation of the United States Magistrate Judge. Petitioner has filed objections to the Report and Recommendation, which includes a request for an evidentiary hearing on his claims. Petitioner's objections also includes two exhibits. Petitioner explicitly has requested that the Court take judicial notice of the second, and the Court presumes that he also is requesting that judicial notice be taken of the first. Having made a de novo determination of those portions of the Report and Recommendation to which objections have been made, the Court concurs with and adopts the findings, conclusions and recommendations of the Magistrate Judge.

IT THEREFORE IS ORDERED that:


1. Petitioner's request that the Court take judicial notice of the Sacramento

1 County Superior Court order granting another inmate's habeas petition attached as  
2 Exhibit B to his objections is denied because that order is not relevant to the Court's  
3 determination of whether the California courts' rejection of petitioner's federal  
4 constitutional claims was contrary to or involved an unreasonable application of  
5 clearly established Supreme Court law, or was based on an unreasonable  
6 determination of the facts in light of the evidence presented at the disciplinary hearing.  
7 Petitioner's implicit request that the Court take judicial notice of the document  
8 attached as Exhibit A to his objections, which according to petitioner are excerpts  
9 from the "Senior Hearing Officer Manual" that were provided in response to a  
10 discovery request in another case, is denied because Exhibit A is not self-  
11 authenticating. Nor are those excerpts relevant to the Court's determination of  
12 whether the California courts' rejection of petitioner's federal constitutional claims  
13 was contrary to or involved an unreasonable application of clearly established  
14 Supreme Court law, or was based on an unreasonable determination of the facts in  
15 light of the evidence presented at the disciplinary hearing.

16 2. Petitioner's request for an evidentiary hearing is denied because the  
17 Court concurs with the Magistrate Judge that all of petitioner's claims are capable of  
18 resolution by reference to the state court and administrative records, as well as the  
19 exhibits submitted by petitioner in support of his claims. See Totten v. Merkle, 137  
20 F.3d 1172, 1176 (9th Cir. 1998). Moreover, the Court concurs with the Magistrate  
21 Judge that it is not a federal habeas court's function to make its own assessment of the  
22 credibility of witnesses or to reweigh the evidence.

23 3. Judgment be entered denying the Petition and dismissing this action with  
24 prejudice.

25  
26 DATED: December 22, 2010

  
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GEORGE H. WU  
UNITED STATES DISTRICT JUDGE